IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2152 OF 2006

Basantlal Hariram Ahuja ...Applicant
vs.
1.M/s.Bahubali Electronics Ltd.
2.State of Maharashtra ...Respondents

Mr.A.H.H.Ponda i/b Mr.S.J.Khera for the Applicant
Mr.S.V.More,A.P.P. for State
Mr.N.K.Das and Mr.Nilesh S. Das Advocates for Respondent No.1

CORAM: A.S.OKA,J.
DATE : NOVEMBER 16,2006.

ORAL JUDGMENT:

1. Rule. Learned Advocate appearing for the first Respondent waives service. The learned A.P.P. waives service for the second Respondent. Considering the facts and circumstances of the case, taken up for hearing forthwith.

2. The first Respondent is the complainant in a complaint filed under section 138 of the Negotiable Instruments Act, 1881. A Revision Application was filed by the present Applicant before the Sessions court for challenging the order issuing process passed by the learned Magistrate on the complaint filed by the first Respondent. By the order impugned dated 2nd May 2006, the learned Additional Sessions Judge, Mumbai has rejected the prayer for condonation of delay in preferring the Revision Application and therefore, the Revision Application has been disposed of.

3. The learned Counsel for the Applicant submits that there is sufficient explanation for delay in the application for

condonation of delay filed by the Applicant. The learned Counsel further submitted that a very technical view is taken by the learned Judge. The learned Counsel for the first Respondent has supported the impugned Judgment by submitting that there is a gross and unexplained delay on the part of the Applicant in filing the Revision Application and there is every justification for the learned Judge to reject the Application for condonation of delay.

4. I have considered the submissions. The order issuing process was passed on 13th February 2002. The summons was served to the Applicant in November 2004 and the Applicant appeared through an Advocate on 30th November 2004 in the said complaint. According to the case of the Applicant, along with the summons a copy of the complaint and copies of the documents produced along with the complaint were not served to the Applicant and the same was received by the Applicant on 10th February 2005. A Revision Application has been filed on 11th October 2005.

5. It is well settled law that a liberal approach is required to be adopted while considering an Application for condonation of delay under section 5 of the Limitation Act, 1963. In the present case, the steps taken by the Applicant show that he was not negligent. The delay is not occasioned due to any negligence on the part of the Applicant. Normally, the occasion for filing an application for condonation of delay

arises only when there is some default on the part of the litigant. In my view, the learned Additional Sessions Judge ought to have adopted a liberal view and ought to have condoned the delay subject to payment of costs. In the present case, considering the facts and circumstances of the case, the amount of costs is quantified at Rs.5,000/-.

6. Hence, I pass the following order :

i) The impugned Judgment and Order dated 2nd May 2006 is quashed and set aside. Miscellaneous Application No.1004 of 2005 filed by the Applicant is allowed subject to the Applicant paying a costs of Rs.5,000/- to the first Respondent within a period of four weeks from today.

ii) On payment of costs by the Applicant within stipulated period, the learned Sessions Judge will hear and decide the Revision Application No.1545 of 2005 on its own merits in accordance with law.

iii) Till disposal of the Revision Application, the proceedings of the complaint filed by the first Respondent will remain stayed.

iv) The Revision Application shall be decided as expeditiously as possible and preferably on or before 30th April 2007.

v) All contentions of both the parties on merits of the

Revision Application are expressly kept open.

JUDGE